CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Excise Appeal No. 2976 of 2012

(Arising out of **Order-in-Original** No.63/2012 C.Ex, dated 24.07.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

Madras Cements Ltd., .. **APPELLANT**
Kumarasamy Raja Nagar,
Jaggayyapet Taluk,
Krishna District,
Andhra Pradesh – 521 457.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Guntur
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

AND
Excise Appeal No. 26371 of 2013

(Arising out of **Order-in-Original** No.19/2013 C.Ex, dated 13.03.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

Madras Cements Ltd., .. **APPELLANT**
Kumarasamy Raja Nagar,
Jaggayyapet Taluk,
Krishna District,
Andhra Pradesh – 521 457.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Guntur
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

APPEARANCE:

Shri R. Parthasarathy, Advocate for the Appellant.

Shri Pradeep Saxena & Shri K Sreenivasa Reey, Authorised Representatives for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30018-30019/2024

Date of Hearing:09.01.2024
Date of Decision:09.01.2024

[ORDER PER: ANIL CHOUDHARY]

M/s Madras Cements Limited (MCL for short) are manufacturers of Cement falling under Chapter 2523 of CETA, 1985. MCL have taken the credit of Service Tax paid on transportation of goods (GTA) beyond the place of removal during the period from April 2008 to June 2011. MCL have reversed the CENVAT Credit for the period from April 2008 to December 2008 in January 2009 & for the period from January 2009 to June 2011 on the last day of every month "under protest".

2. SCNs as under were issued disallowing the CENVAT Credit on outward transportation beyond the place of removal under Rule 14 read with Section 11A of the Central Excise Act, 1944.

Sl.No.	SCN dated	Period	Demand Rs.
1	26/03/2009	April 2008 to December 2008	1,37,95,036
2	01/02/2010	January 2009 to August 2009	1,15,59,377
3	02/09/2010	September 2009 to March 2010	99,93,762
4	15/04/2011	April 2010 to October 2010	96,45,002
5	11/10/2011	November 2010 to June 2011	75,00,569
6	02/01/2023	January 2012 to July 2012	78,77,430

3. The above 5 SCNs were adjudicated vide Order-in-Original No. 63/2012-CE dated 24.07.2012 confirming the demand of Rs. 5,24,93,746/- besides imposing penalty. The Sixth SCN was adjudicated vide Order-in-Original No. 19/2013 dated 13.03.2013 confirming the demand of Rs. 78,77,430/- besides imposing penalties. Aggrieved by the said OIOs the assessee have filed the present appeals.

4. The issue involved in the present appeal is whether the assessee is eligible for CENVAT credit on the service tax paid on GTA for outward freight (for finished goods).

4.1 The assessee in the grounds of appeals states that -*"outward transportation of up to the place of removal" is preceded by the expression "inputs or capital goods" and there is no reference to the final products. Hence, the appellants submit that meaning of the expression "outward transportation up to the place of removal" is not applicable for the goods manufactured by a manufacturer."* Further the appellant states that *"the expression place of removal given* *under Section 4 (3) of Central Excise Act, has to be confined only for the purpose of sub-section 3 of Section 4 and it cannot be applied for determination of input cenvat credit for outward transportation or for extending the meaning of place of removal for cenvat credit purposes relating to input services.*". The assessee further states that "*the price charged for the cement sold in bags is FOR destination basis, the place of removal in this case is the place of their customer where the goods are delivered*"

5. Heard the parties. Learned Counsel for the appellant submits that the impugned order was passed in July 2012 and March 2013. Subsequently, the law have been examined on this issue by the Hon'ble Supreme Court & High Courts in the following subsequent judgments:

i) Ultra Tech Cements Ltd., [2018 (9) GSTL 337 (SC)]

ii) Ispat Industries Ltd., [2013 (15) ELT 670 (SC)]

iii) CCE, Mumbai-III Vs Emco Ltd., [2015 (322) ELT 394 (SC)]

iv) CBIC Circular No. 1065/4/2018-CX dated 08.06.2018

v) Mangalam Cements Ltd., Vs Commissioner [2020 (32) GSTL J 156 (SC)]

vi) Bharat Fritz Ltd., Vs CCT, Bangalore [2022 (66) GSTL 434 (Kar)]

6. It is further pointed out that similar issue was referred to Larger Bench in the case of The Ramco Cements Ltd., at Chennai Bench and vide Interim Order No. 40020/2023 dated 21.12.2023 the Larger Bench have opined:

> "35. In the result, in a case where clearances of goods are against FOR contract basis, the authority needs to ascertain the 'place of removal' by applying the judgments of the Supreme Court in Emco and Roofit Industries, the decision of the Karnataka High Court in Bharat Fritz Werner, and the Circular dated 08.06.2018 of the Board, to determine the admissibility of CENVAT credit on the GTA Service upto the place of removal.
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> 36. The reference is answered, accordingly. The appeal shall now be listed before the Division Bench for hearing."

7. In view of the aforementioned subsequent development of law and clarification on the issue by the Apex Court, we allow these appeals by way of remand. We remand the matter to the Original Adjudicating Authority who shall hear the appellant and after perusing the evidence laid and the case laws referred, shall pass a reasoned Order after giving adequate opportunity for hearing to the appellant. The appellant is also directed to

appear before the Adjudicating Authority with a copy of this Order within a period of 60 days and seek opportunity of hearing. All issues are kept open.

8. Appeals allowed by way of remand.

(Operative part of this Order was pronounced
in court on conclusion of the hearing)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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